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APPENDIX IX.

[Vide item IV at page 606 supra.]

(BILL No. 9 OF 1934.)

The Madras Debt Conciliation Bill.

To

THE HONOURABLE THE LEGISLATIVE COUNCIL
OF THE GOVERNOR OF MADRAS.

The Select Committee appointed to consider the Madras Debt Conciliation Bill (Bill No. 9 of 1934) has the honour to make the following report.

2. The Bill was published in the *Fort St. George Gazette*—

in English on the 13th March 1934,
in Hindustani on the 26th June 1934,
in Telugu on the 3rd July 1934,
in Tamil on the 17th July 1934,
in Kanarese on the 17th July 1934, and
in Malayalam on the 24th July 1934.

3. The Committee met on the 12th, 14th, 28th and 29th September 1935 and on the 10th October 1935, in the Council Chamber, Fort St. George, for the purpose of considering the provisions of the Bill. On the 11th October 1935 it again met and passed the Report.

4. The more important alterations in the Bill made by the Committee are referred to below.

5. *Clause 2, sub-clause (c)—Definition of 'Agriculture.'*—The Committee has amplified the definition of the term 'agriculture' so as to make it include "the use of land for any purpose of husbandry, inclusive of the keeping or breeding of livestock, poultry or bees and sericulture and the growing of fruits, vegetables and the like."

Sub-clause (g).—In the definition of the term 'debtor' the Committee has made it clear that the term will include a person who earns his livelihood mainly by agriculture, whether he cultivates the land personally or not. It has also enlarged the scope of the definition by including within it, any person whose

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debts exceed Rs. 100 instead of Rs. 150. The Bill as introduced applied the term to "a person who earned his livelihood mainly by agriculture *and* who is an occupancy tenant or landholder." The Committee has altered the word 'and' into 'or' and has made it clear that the term applies to either of the persons mentioned. The Committee has added new definitions of a 'secured creditor' and 'secured debt.'

6. *Clause 3.*—This clause refers to the establishment of a Debt Conciliation Board. The Committee has restricted the number of members of the board to three, inclusive of the chairman, and has decided that the chairman should be a gazetted officer of Government appointed by the Government. It has added a new sub-clause (5) providing for the consequences of the dissolution of a board under sub-clause (1) and empowering the Local Government to establish another board for the area.

7. *Clause 4.*—The Committee has redrafted this clause so as to provide that the application made by a debtor in the first instance should be made to the board having jurisdiction over the area within which he ordinarily resides. It is only in cases where there is no board for the area of residence that he can make an application to a board having jurisdiction over the area in which he holds immovable property.

The Committee has deleted the proviso to sub-clause (1) of this clause which had stated that no application shall be made if a debtor's debts exceeded Rs. 25,000 or such larger amount as may be prescribed for the area.

8. *Clause 7-A.*—The Committee has inserted a new clause 7-A mentioning the grounds on which the application under clause 4 might be dismissed. The Committee has consequently deleted the proviso to sub-clause (1) which contained one of the grounds on which the board could dismiss an application.

9. *Clause 8, sub-clause (2).*—The proviso to this sub-clause refers to the cases in which the debt in respect of which a creditor has failed to submit a statement as required under sub-clause (1) can be revived. The Committee has made it clear that an application

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for such revival should be made by a creditor *within* two months after he became aware of the proceedings under this clause.

10. *Clause 9, sub-clause (3).*—The Committee considers it desirable to empower the board to excuse, for valid reasons, any default or delay in producing documents proving claims of creditors, and to grant reasonable time for producing the same. They have inserted a new proviso accordingly.

11. *Clauses 10 and 11.*—The Committee has redrafted these clauses so as to make their intention clearer. According to the clauses, as redrafted, the board shall call upon the debtor and each creditor to explain his case regarding each debt, decide all disputes as to the existence or quantum of each debt and as to the assets of the debtor, and prepare a complete schedule of the creditors and the assets and liabilities of the debtor. The decision of the board is expressly stated to be binding on all parties in all proceedings before the board.

12. *Clause 12.*—This clause refers to an agreement of amicable settlement and its registration by the board. As originally drafted, it enabled the board to register an agreement of amicable settlement entered into by the creditors to whom not less than 50 per cent of the total amount of a person's debts were owing. The Committee has altered the percentage from 50 to 40. It has made it clear that before registering an agreement of amicable settlement, the board should consider it equitable. Among the particulars to be mentioned in the settlement have been included "the assets from which the debts are to be paid."

The Committee considers it desirable to safeguard the rights of secured creditors by providing expressly that 'if a secured creditor does not agree to the settlement, such settlement shall not affect his rights to proceed against the secured property.' It has accordingly inserted a proviso to sub-clause (1) to that effect. The period within which an agreement under this clause can be registered has been increased by the committee from 14 to 30 days.

13. *New clause 12-A.*—The Committee thinks that special provision should be made, in drawing up the schedule of the assets and liabilities of the debtor, to

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leave out of account all properties which are exempt from attachment under the Code of Civil Procedure. It considers that such properties should be allowed to the judgment debtor for his use and should be free from liability for his debts.

14. *Clause 13.*—This clause provides for the recovery of sums due under the agreement of amicable settlement registered under clause 12. As it was originally drafted, the amount was recoverable as an arrear of land revenue, but if the Collector failed to recover any part of the amount as an arrear of land revenue and certified that it was so irrecoverable, the agreement ceased to subsist, and the amount which was payable under the agreement was recoverable as if it had been decreed by a civil court in favour of the creditor. The Committee has provided that the amount due under an agreement of amicable settlement should not be recoverable as an arrear of land revenue, but should be merely treated as an amount for which a decree of a civil court had been passed. The Committee has redrafted clause 13 accordingly.

The change in this provision has led to various consequential alterations in the other parts of the Bill which the Committee has carried out.

15. *Clause 14.*—In this clause the Committee has provided that if no amicable settlement is arrived at under clause 12, within twelve months from the date of the application under clause 4, the board shall dismiss the application.

The Committee considers that the local Government may provide facilities for the payment of debts in respect of which an agreement under clause 12 has been entered into, by the grant of loans under the Agricultural Loans Act in cases where there is sufficient security, and by realization of the amount from the debtors in equated annual payments spread over a long period, say 20 or 25 years. It has accordingly added a proviso to this effect.

16. *Clause 15.*—The Committee has considered it desirable to insert at the end of sub-clause (1) a proviso stating the particulars which the board may take into account before granting a certificate under this clause,

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such as fall or rise in the price of land and its produce in the locality, the amount of consideration actually received, etc.

Sub-clause (3).—In this sub-clause, the Committee had made it clear that a decree passed in respect of a certified debt cannot be executed until all amounts recorded under such agreement have been paid only as against the assets mentioned in the agreement of amicable settlement, and not as against the other assets.

17. *Clause 17-A.*—In this clause, the Committee has inserted the words ‘for a fair price’ after the words ‘Any alienation of land,’ so as to protect only *bona fide* alienations for proper consideration made in pursuance of or to carry out an agreement of amicable settlement, from the provisions of law against transfers giving fraudulent preference.

18. The Committee has made a few other changes in the Bill which are all shown in the copy which is annexed. It does not consider that the Bill has been so altered as to necessitate its republication.

FORT ST. GEORGE,
11th October 1935.

P. SUBBARAYAN,
Ag. Chairman.

[*Note.*—The changes made by the Select Committee are shown in clarendon type and the portions omitted are shown by dots.]

THE MADRAS DEBT CONCILIATION BILL

(As amended by the Select Committee.)

A Bill to make provision for the setting up of Debt Conciliation Boards to relieve agriculturists from indebtedness.

WHEREAS it is expedient to relieve agriculturists from indebtedness by amicable settlement between them and their creditors;

AND WHEREAS the previous sanction of the Governor-General required by sub-section (3) of section 80-A of the Government of India Act has been obtained to the passing of this Act; It is hereby enacted as follows:—

1. (1) This Act may be called the Madras Debt Conciliation Act, 193 .

Short title,
extent and
commence-
ment.

(2) It extends to the whole of the Presidency of Madras.

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(3) It shall come into force on such date as the Local Government may, by notification, direct.

2. In this Act, unless there is anything repugnant in the subject or context—

(a) The expression 'Landholder' as used in this Act shall be taken to comprise the following persons :—

All persons holding under a Sanad-i-Milkiyat-i-istimrar, all other zamindars, shrotriyamdars, jagirdars, inamdars and all persons farming the land revenue under Government. All holders of land under ryotwari settlements, or in any way subject to the payment of revenue direct to Government.

(b) The expression 'Tenant' means a ryot having a permanent right of occupancy in his holding and includes a kanamdar in Malabar and a 'Mulgeni' tenant in South Kanara.

(c) . . . 'Agriculture' . . . includes horticulture, and the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees and sericulture and the growing of fruits, vegetables and the like.

(d) 'Board' means a Debt Conciliation Board established under sub-section (1) of section 3.

(e) 'Creditor' means a person to whom a debt is owing and includes a co-operative society.

(f) 'Debt' means all liabilities owing to a creditor, in cash or kind, secured or unsecured, payable under a decree or order of a civil court or otherwise, whether **mature** . . . or not (. . .) . . . but shall not include arrears of wages, land revenue or anything recoverable as an arrear of land revenue or any money for the recovery of which a suit is barred by limitation.

(g) 'Debtor' means a person who earns his livelihood mainly by agriculture . . . or who is an occupancy tenant or landholder **whether he cultivates the land personally or otherwise** whose debts exceed . . . one hundred rupees.

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- (h) 'Prescribed' means prescribed by rules made under this Act.
- (i) 'Secured debt' includes mortgage debt or any debt for which there is security, lien or charge created by deed, statute or otherwise.
- (j) 'Secured creditor' is one for whose debt he holds a security by way of mortgage, lien or charge created by a deed, statute or otherwise.

3. (1) The Local Government may establish a Debt Conciliation Board for any district or part of a district. Such board shall consist of a chairman who shall be a gazetted officer of the Government and two members of whom one shall be a non-official to be appointed by the Local Government. The local Government may, for reasons to be recorded in writing, cancel the appointment of the Chairman or any member of the board or dissolve any board and from the date of such dissolution the board shall cease to exist.

(2) The chairman and every member of a board so established shall be appointed for a term not exceeding three years. Such chairman or member may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years.

(3) A board shall have such quorum as may be prescribed.

(4) Where the chairman and members of a board are unable to agree, the opinion of the majority shall prevail. Where the board is equally divided, the chairman shall have a casting vote.

(5) When a board is dissolved or otherwise ceases to exist, the Local Government may, at any time establish another board for the area for which the former board was established and may declare the board newly established to be the successor in office of the board which has ceased to exist and such board shall exercise all the powers under the Act.

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4. (1) A debtor may make an application for the settlement of his debts to the board established for the local area within which he ordinarily resides, or if no board has been established for that local area, to the

Application for settlement between debtor and his creditor.

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board established for any local area in which he holds immovable property, but he shall not apply to more than one board.

(2) Unless the debtor has already made an application under sub-section (1), any of his creditors may make an application to a board to which the debtor might have applied under that sub-section.

(3) If applications for the settlement of the debts of the same debtor are made to more than one board, such applications shall, in accordance with rules made under this Act, be transferred to and dealt with by one board as one single application.

Verification
of applica-
tion.

5. Every application to the board shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

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Particulars
to be stated
in applica-
tion.

6. (1) Every application presented by a debtor to a board shall contain the following particulars, namely:—

- (a) a statement that the debtor is unable to pay his debts;
- (b) the place where he resides;
- (c) the amount and particulars of all claims against him together with the names and residences of his creditors so far as they are known to, or can by the exercise of reasonable care and diligence be ascertained by him; and
- (d) the amount and particulars of all his property, including claims due to him together with a specification of the value of such property not consisting of money, ... the place or places at which any such property is to be found and details of any mortgage, lien or charge subsisting thereon.

(2) Every application presented by a creditor shall contain the following particulars, namely:—

- (a) the place where the debtor resides; and
- (b) the amount and particulars of his claim against such debtor.

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7. (1) On receipt of an application under section 4 the board shall pass an order fixing a date and place for hearing the application. Procedure on application.

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(2) Notice of the order under sub-section (1) shall be sent by registered post to the debtor and creditors.

(3) If the application is filed by a creditor, the debtor on his appearance shall furnish the particulars mentioned in sub-section (1) of section 6 and notice shall be sent to all the creditors specified by him.

7-A. An application under section 4 may be dismissed by the board at any stage of the proceedings—

- (a) if, for reasons to be stated in writing, the board does not consider it desirable or practicable to effect a settlement of debts ; or
- (b) if, in the opinion of the board, the applicant fails to pursue his application with due diligence :

Provided that, when such applicant is a creditor, the board, instead of dismissing such application, may substitute the debtor or any other creditor, who shall thereafter be deemed to be the applicant for the purposes of this Act ; or

- (c) if the application includes a claim which, in the opinion of the board, is collusive and intended to defraud any creditor.

8. (1) If, after examining the debtor, it is in the opinion of the board desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served or published in the manner prescribed, calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. Such statement shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying claims and shall be submitted to the board . . . within two months from the date of

Notice of calling upon creditors to submit statements of debts.

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service or publication of the notice as the case may be : provided that, if the board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such directions, it may extend the period for the submission of his statement of the debt owed to him.

(2) Every debt of which a statement is not submitted to the board in compliance with the provision of sub-section (1) shall be deemed for all purposes and all occasions to have been duly discharged :

Provided that, if a creditor proves to the satisfaction of the board or a civil court that the notice was not served on him and that he has no knowledge of its publication, the board or court may revive the debt, if the creditor files the application within two months after he becomes aware of the proceedings under this section.

9. (1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-section (1) of section 8 shall furnish, along with such statement full particulars of all such debts and shall at the same time produce all documents, including entries in books of account on which he relies to support his claims, together with a true copy of every such document.

(2) The board shall, after marking for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

(3) If any document which is in the possession or under the control of the creditor is not produced by him as required by sub-section (1) the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming under him :

Provided the board shall have power to excuse for valid reasons any default or delay in producing the document and to grant reasonable time for producing the same.

10. (1) The board shall call upon the debtor and each creditor respectively to explain his case regarding each debt.

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Procedure
on submission
of statement
of debts.

Board to
endeavour
amicable
settlement.

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(2) If there is a dispute as to the existence or quantum of the debt due to any creditor or the assets of any debtor the board may decide the matter after taking such evidence as is adduced by all the parties concerned and such decision shall be binding on all parties in all proceedings before the board :

Provided that a decree of a civil court relating to a debt shall be conclusive evidence as to the existence and amount of the debt.

(3) The board shall prepare a complete schedule of the creditors and the assets and liabilities of the debtor.

Power of board to require attendance of persons and production of documents and to receive evidence.

11. (1) Subject to rules made under this Act, a board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a civil court by the Code of Civil Procedure, 1908.

(2) Any person present may be required by a board to **furnish any information** or to produce any document then and there in his possession or power.

12. (1) If the creditors to whom not less than **forty** . . . per cent of the total amount of the debtor's debts are owing come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording the amounts payable to such creditors and the manner in which **and the assets from which** and the times at which they are to be paid. Such agreement **if considered equitable by the board** shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties :

Agreement of amicable settlement, its registration and effect.

Provided that, when a co-operative society is one of such creditors no settlement, in so far as it

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affects the debts owing to such society, shall be valid without the previous approval in writing of the Registrar of Co-operative Societies :

Provided further that when a secured creditor does not agree to the settlement, such settlement shall not affect his rights to proceed against the secured property.

(2) An agreement thus made shall, within **thirty** . . . days from the date of its making, be registered under the Indian Registration Act, 1908, by the chairman of the board in such manner as may be prescribed and it shall then take effect as if it were a decree of a civil court.

(3) For the purpose of the registration of an agreement under sub-section (2), the chairman of the board shall be deemed to be an officer of the Government empowered to execute such agreement within the meaning of section 88 of the Indian Registration Act, 1908.

12-A. In any scheme of debt conciliation under this Act such properties as are exempt from attachment under the Code of Civil Procedure, 1908, shall not be taken into account and shall be left to the judgment debtor free from any liability for his debts.

Recovery
of sums
due under
agreement.

13. . If a debtor defaults in paying any amount due in accordance with the terms of an agreement registered under sub-section (2) of section 12, **any** . . . amount payable under such agreement which remains unpaid shall be recoverable as
 if a decree of a civil court had then been passed for its payment.

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14. If no amicable settlement is arrived at under sub-section (1) of section 12 within twelve months from the date of the application under section 4 the board shall dismiss the application : Power of Board to dismiss application.

Provided when once a settlement is arrived at under sub-section (1) of section 12, the Local Government may facilitate the payment of debts by granting loans if there is sufficient security and may realize the amount from the debtors in such equated annual instalments as the Government may prescribe.

15. (1) Where, during the hearing of any application made under section 4, any creditor refuses to agree to an amicable settlement, the board shall . . . if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought to reasonably accept, grant the debtor a certificate, in such form as may be prescribed in respect of the debts owed by him to such creditor : Grant of certificate in respect of certain debts.

Provided the board in coming to a decision whether the offer made is fair or not may take the following into consideration :—

- (i) the fall or rise in the value of land and its produce, in the locality ;
- (ii) the amount of consideration actually received ;
- (iii) the reasonableness of the rates of interest ;
- (iv) onerous conditions, if any, included in the grant of the loan ;
- (v) whether at any time, the creditor or the debtor was offered settlement of the debt in full or part and if so what the terms were ; and
- (vi) any other particular which the board thinks desirable to take into account.

(2) Where any creditor sues in a civil court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the court shall, notwithstanding the provisions of any law for the time being in force, not allow the plaintiff any costs in such suit, or any interest on the debt after the date of such certificate in excess of simple interest at 6 per cent per annum on the principal amount due on the date of such certificate. Power of court to disallow costs or interest.

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(3) Where after the registration of an agreement under sub-section (2) of section 12, any unsecured creditor sues for the recovery of a debt, other than a debt incurred subsequent to such agreement in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such agreement . . . , any decree passed in such suit shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, not be executed as against the assets provided, if any, in the agreement for the agreed debts until all amounts recorded as payable under such agreement have been paid . . .

Bar of civil
suits.

16. No civil court shall entertain—

(a) any suit in respect of—

- (1) any matter pending before a board, or
- (2) the validity of any procedure or the legality of any agreement made under this Act, or
- (3) the recovery of any debt recorded as wholly or partly payable under an agreement registered under sub-section (2) of section 12 from any person who, as a debtor, was party to such agreement; or

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- (4) the recovery of any debt which has been deemed to have been duly discharged under sub-section (2) of section 8, except a debt which is revived under the proviso to that sub-section;

(b) any application to execute a decree, the execution of which is suspended under sub-section (3) of section 15.

Avoidance
of certain
transfers of
debtors'
property.

17. Every transfer of property made, with intent to defeat or delay the creditors of the debtor, after an application has been made to a board under section 4 . . . shall be voidable at the option of any creditor so defeated or delayed.

17-A. Any alienation of land for a fair price made in pursuance of or to carry out the agreement mentioned in section 12 shall not be considered as fraudulent preference under the Presidency Insolvency Act

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and the (New) Provincial Insolvency Act, nor shall be voidable under section 53 of the Transfer of Property Act.

18. No appeal or application for revision shall lie against any order passed by a board. Bar of appeal or revision.

19. A board may, on application from any person interested made within ninety days of the passing of an order, review any order passed by it and pass such order in reference thereto as it thinks fit : Power of board to review its order.

Provided that no order shall be varied or reversed unless notice has been given to the persons interested to appear and be heard in support of such order.

20. In any proceedings before a board any party may be permitted to appear by an agent authorized in writing but not by a legal practitioner. Appearance of party before board by agent but not by legal practitioner.

21. When an application has been made to a board under section 4, any suit or other proceedings then pending before a civil court in respect of any debt for the settlement of which application has been made shall be suspended until the board has dismissed the application Suspension of pending application or suit.

22. Where in the course of an enquiry into an application made under section 4 a board finds that there is any sum owing to Government on account of loans advanced under the Agriculturists' Loans Act, 1884, or the Land Improvements Loans Act, 1883, or otherwise, the board shall report this fact to the Collector. Submission of reports by board regarding sums due to Government.

23. In calculating the period of limitation for any suit filed in, or proceedings before, a civil court for the recovery of a debt which was the subject of any proceedings under this Act, the time during which such proceedings had continued shall be excluded. Allowance of time for limitation.

24. The members of a board shall be deemed to be public servants within the meaning of the Indian Penal Code. Members of the board deemed to be public servants.

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Power to
make rules.

25. In addition to any power specially conferred by this Act, the Local Government may make rules—

- (a) prescribing the quorum for, and regulating the procedure before a board ;
- (b) prescribing the manner in which notices shall be issued and served or published under sub-section (1) of section 8 ;
- (c) prescribing the charges to be made by a board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid ;
- (d) prescribing the records to be kept and the returns to be made by a board ;
- (e) prescribing the allowances, if any, to be paid to the chairman and members of a board ;
- (f) regulating the power of a board to summon parties and witnesses under section 11 and the grant of expenses to witnesses ;
- (g) prescribing the place at which and the manner in which an agreement shall be registered under sub-section (2) of section 12 ;
- (h) prescribing the form of certificate to be granted under sub-section (1) of section 15 ; and
- (i) generally, for the purpose of carrying into effect the provisions of this Act.

General
provisions
regarding
rules.

26. (1) All rules for which provision is made in this Act shall be made by the Local Government and shall be consistent with this Act.

(2) All rules shall be subject to the condition of previous publication.

(3) In making any rule the Local Government may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees, and, where the breach is a continuing one, with further fine which may extend to ten rupees for every . . . day after the first during which the breach has been persisted in.